



[BILLING CODE: 6750-01S]

FEDERAL TRADE COMMISSION

[File No. 131 0168]

Professional Skaters Association, Inc.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order -- embodied in the consent agreement -- that would settle these allegations.

DATES: Comments must be received on or before January 22, 2015.

ADDRESSES: Interested parties may file a comment at

<https://ftcpublic.commentworks.com/FTC/proskatersconsent> online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write “the Professional Skaters Association, Inc. - Consent Agreement; File 131-0168” on your comment and file your comment online at

<https://ftcpublic.commentworks.com/FTC/proskatersconsent>

by following the instructions on the web-based form. If you prefer to file your comment on paper, write “the Professional Skaters Association, Inc. - Consent Agreement; File 131-0168” on your comment and on the envelope, and mail it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade

Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Karen A. Mills, Bureau of Competition, (202-326-2052), 600 Pennsylvania Avenue, NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for December 23, 2014), on the World Wide Web, at <http://www.ftc.gov/os/actions.shtm>.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before January 22, 2015. Write “the Professional Skaters Association, Inc. - Consent Agreement; File 131-0168” on your comment. Your comment - including your name and your state - will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Website, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals’ home contact information from comments before placing them on the Commission Website.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone’s Social Security number, date of birth, driver’s license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card

number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any “[t]rade secret or any commercial or financial information which . . . is privileged or confidential,” as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).¹ Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/FTC/proskatersconsent> by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov/#!home>, you also may file a comment through that website.

If you file your comment on paper, write “the Professional Skaters Association, Inc. - Consent Agreement; File 131-0168” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex D), Washington, DC 20580, or deliver your

¹ In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Website at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before January 22, 2015. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

Analysis of Agreement Containing Consent Order to Aid Public Comment

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Order ("Consent Agreement") from the Professional Skaters Association, Inc. (hereinafter "PSA"). The Commission's complaint ("Complaint") alleges that PSA, acting as a combination of its members and in agreement with at least some of its members, restrained competition among its members and others in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, by adopting and maintaining a provision in its Code of Ethics that restrains coaches from soliciting teaching work.

Under the terms of the proposed Consent Agreement, PSA is required to cease and desist from restricting competition among its members, or working with other ice skating organizations to restrict competition, including by restricting solicitation, advertising, or price--related competition.

The Commission anticipates that the competitive issues described in the Complaint will

be resolved by accepting the proposed order, subject to final approval, contained in the Consent Agreement. The proposed Consent Agreement has been placed on the public record for 30 days for receipt of comments from interested members of the public. Comments received during this period will become part of the public record. After 30 days, the Commission will review the Consent Agreement again and the comments received, and will decide whether it should withdraw from the Consent Agreement or make final the accompanying Decision and Order (“the Proposed Order”).

The purpose of this Analysis to Aid Public Comment is to invite and facilitate public comment. It is not intended to constitute an official interpretation of the proposed Consent Agreement and the accompanying Proposed Order or in any way to modify their terms.

The Consent Agreement is for settlement purposes only and does not constitute an admission by PSA that the law has been violated as alleged in the Complaint or that the facts alleged in the Complaint, other than jurisdictional facts, are true.

I. The Complaint

The Complaint makes the following allegations.

A. The Respondent

PSA is a non-profit trade association whose members include approximately 6400 coaches of ice skating who teach, train, and coach skaters at all levels -- from beginners to elite skaters. Many PSAs members teach and coach skaters for a fee. Some PSA members are employed at schools, universities, ice skating clubs, and ice skating rinks. PSA membership provides financial benefits to its members.

PSA membership and continuing education is required by the U.S. Figure Skating Association (“USFSA”) for coaches of skaters participating in: (i) USFSA qualifying competitions, and (ii) international ice skating competitions as part of Team USA. Because of

this requirement, PSA membership is required in order to coach competitive skaters.

Coaches require access to ice skating rink facilities. Some ice skating rink facilities require that coaches have PSA membership.

PSA maintains a Code of Ethics applicable to the commercial activities of its members. The PSA Code of Ethics states that, “No member shall in any case solicit pupils of another member, directly or indirectly, or through third parties.” The PSA Code of Ethics also requires that, “Prior to acting as a coach, the member shall determine the nature and extent of any earlier teaching relationship with that skater and other members.”

B. The Anticompetitive Conduct

The Complaint alleges that PSA violated Section 5 of the Federal Trade Commission Act by restraining competition among coaches of ice skating through adoption and enforcement of the no-solicitation provision of PSA’s Code of Ethics. This is in effect an agreement among competitors not to compete. PSA interprets the no-solicitation rule broadly, prohibiting direct, indirect, third-party, and social media solicitation of teaching work. PSA has instructed its members and others that the Code of Ethics no solicitation rule prohibits coaches from many types of direct or indirect communication with skaters and parents, including:

- Suggesting a skater change coaches
- Suggesting a skater would have better results by changing coaches
- Suggesting a skater who attends a seminar stay for a few days of additional training
- Sending recruiting material to a skater or parent
- Claiming one coach is a more qualified coach than another
- Claiming one ice skating program is better than another
- Offering free lessons, ice time, or equipment

PSA requires its members to agree to abide by the Code of Ethics, educates members about the Code of Ethics, exhorts its members to follow the Code of Ethics and polices members' behavior. It also enforces the Code of Ethics through a grievance process administered by PSA's Committee on Professional Standards (the "COPS"). PSA has enforced the Code of Ethics no-solicitation provision against at least nine member coaches since 2006, with penalties including private admonition, public admonition, suspended membership, and probation.

PSA has sanctioned member coaches for soliciting students of other members even when the students and their parents wanted to switch coaches for a variety of compelling reasons. PSA has enlisted parents and skaters in the effort to enforce the Code of Ethics no-solicitation provision. The Complaint alleges that the purpose, effect, tendency, or capacity of the combination, agreement, acts and practices of PSA has been and is to restrain competition unreasonably and to injure consumers by discouraging and restricting competition among ice skating teachers and coaches.

II. The Proposed Order

The Proposed Order has the following substantive provisions:

Paragraph I contains definitions for terms used in the Order.

Paragraph II requires PSA to cease and desist from restraining or declaring unethical, interfering with, or advising against the solicitation of teaching work. It also requires that PSA not prohibit or advise against coaches' solicitation of students. Paragraph II requires PSA to cease and desist from encouraging or assisting any other organization to adopt, maintain, or enforce any Code of Ethics or other restriction on solicitation. Finally, Paragraph II requires PSA to cease and desist from restraining price competition, including offering free lessons.

The Proposed Order does not prohibit PSA from adopting and enforcing reasonable principles, rules, guidelines, or policies governing the conduct of its Members with respect to (i) representations that Respondent reasonably believes would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act; (ii) prevention of sexual and physical abuse of children; or (iii) in-person solicitation of a skater actively engaged in (a) a skating lesson, or (b) skating or preparing to skate at an arena in a test, competition, or exhibition. The Order defines skating or preparing to skate as including meetings with coaches, locker room time, practice skating, and warm-up skating.

Paragraph III of the Proposed Order requires PSA to remove from its organization documents and website any statement inconsistent with the Proposed Order. PSA must publicize to its members, new members, leaders, employees, and the public the changes PSA must make to the Code of Ethics, and a statement describing the Consent Agreement. Finally, PSA must notify the Ice Skating Institute (“ISI”) and United States Figure Skating Association that PSA (i) agreed to change its Code of Ethics and (ii) will not enforce or investigate on behalf of Skating Organizations violation of any Code of Ethics or practice that does not comply with the FTC’s Order against PSA. Further, the Order requires PSA to notify USFSA and ISI that the Order will prevent PSA from doing on behalf of USFSA or ISI anything that, if done by PSA, would be inconsistent with the Order against PSA. This is necessary because PSA provides various education services on ethics to both USFA and ISI coaches.

Paragraph IV of the Proposed Order requires PSA to design, maintain, and operate an antitrust compliance program. PSA must have an Antitrust Compliance Officer for the duration of the Proposed Order. For a period of five years, PSA must provide guidance to its staff, employees, members, and leaders concerning the antitrust laws and PSA obligations under the Proposed Order. PSA also must implement policies and procedures to enable persons to ask

questions about, and report violations of, the Proposed Order and the antitrust laws confidentially and without fear of retaliation, and to discipline its leaders, employees and agents for failure to comply with the Proposed Order.

Paragraphs V-VII of the Proposed Order require certain standard compliance reporting, cooperation, and access.

The Proposed Order will expire in the 20 years.

By direction of the Commission.

Janice Podoll Frankle,
Acting Secretary.

[FR Doc. 2014-30649 Filed 12/30/2014 at 8:45 am; Publication Date: 12/31/2014]